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ERB, NATHAN				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/730,115

Applicant(s)

NADAN, JOSEPH S.

Examiner

NATHAN ERB

Art Unit

3628

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Election/Restrictions

1. In response to Applicant's traversal of Examiner's restriction, the restriction requirement is hereby withdrawn.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 8-9 and 21-35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As per **Claims 8-9**, claims 8-9 recites the limitation "said controlling entity" in the first line of each claim. There is insufficient antecedent basis for this limitation in the claim.

As per **Claims 21-35**, the preamble of claim 21 recites a "method being stored on a computer readable medium." It is unclear how a method, a series of steps (actions), could be stored on a physical object (a computer readable medium). Furthermore, this language creates confusion over whether a method, or a computer program stored on a computer-readable medium, is intended to be claimed. Therefore, claim 21 and all of the claims depending from it are indefinite.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 21-35 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 21-35 are directed to a series of steps. In order for a series of steps to be considered a proper process under § 101, a claimed process must either: (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials). *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972). Thus, to qualify as patent eligible, these processes should positively recite the other statutory class to which they are tied (e.g., by identifying the apparatus that accomplishes the method steps), or positively recite the subject matter that is being transformed (e.g., by identifying the product or material that is changed to a different state). Claims 21-35 identify neither the apparatus performing the recited steps nor any transformation of underlying materials, and accordingly are directed to non-statutory subject matter.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 3-7, 10-17, 19-23, 25-30, and 32-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakagawa et al., U.S. Patent No. 6,374,178 B2, in view of Applicant's prior art admission.

As per Claims 1 and 20, Nakagawa et al. discloses:

- a system for administering a collaborative shipping community (column 3, lines 29-63; column 14, lines 8-17);
- a processor (Figure 3; column 10, lines 29-37; column 12, line 64, through column 13, line 16);
- memory operationally attached to said processor (Figure 3; column 9, lines 6-15; column 10, lines 29-37; column 12, line 64, through column 13, line 16);
- an input device operationally attached to said processor (Figure 3; column 7, lines 11-22; column 8, lines 43-53; column 10, lines 29-37; column 12, line 64, through column 13, line 16; column 14, lines 8-17);
- storing means for storing: a plurality of shipping resource data fields, and shipping resource data associated with at least one shipping resource, said shipping resource data corresponding to at least one of said plurality of shipping resource data fields (column 14, lines 18-54);
- receiving means for receiving query data, said query data associated with at least one shipping need, and said query data corresponding to at least one of said plurality of shipping resource data fields (column 3, lines 48-63; column 4, lines 31-52; column 5, lines 9-25; column 14, lines 18-54);

- retrieval means for retrieving, based on a match between said query data and said shipping resource data, a list of at least one shipping resource (column 3, lines 48-63; column 4, lines 31-52; column 5, lines 9-25; column 14, lines 18-54);

- delivery means for delivering said list of at least one shipping resource and said shipping resource data associated with each of said shipping resources (column 7, lines 23-36; column 13, line 66, through column 14, line 2).

Nakagawa et al. fails to disclose wherein the type of shipping is drayage shipping. Applicant's prior art admission discloses wherein the type of shipping is drayage shipping (Applicant's specification, paragraphs [0003]-[0004]). Therefore, the prior art included each element claimed although not necessarily in a single reference. One of ordinary skill in the art could have combined the elements as claimed by known methods (this is simply applying the transportation system of Nakagawa et al. specifically to drayage services). In combination, each element merely would have performed the same function as it did separately (Nakagawa et al.'s limitations would still be coordinating shipping services among multiple system participants to improve efficiency; Applicant's prior art admission's limitation would still be providing the land transport portions of intermodal transportation routes). One of ordinary skill in the art would have recognized that the results of the combination were predictable (the limitations do not interfere with the proper use of the other limitations in the combination; there are no surprise effects from the combination). Thus, the combination would have been obvious.

As per **Claim 3**, Nakagawa et al. fails to disclose wherein said drayage resource is a power unit. Applicant's prior art admission further discloses wherein said drayage resource is a power unit (Applicant's specification, paragraphs [0003]-[0004], paragraph [0006]). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the invention of Nakagawa et al. as modified in the rejection for claim 1 such that said drayage resource is a power unit, as disclosed by Applicant's prior art admission. Motivation is provided by Applicant's prior art admission in that power units are used to perform drayage services (Applicant's specification, paragraphs [0003]-[0004], paragraph [0006]).

As per **Claim 4**, Nakagawa et al. further discloses wherein said shipping resource is a load (column 14, lines 18-54).

As per **Claim 5**, Nakagawa et al. further discloses wherein said shipping resource is a storage space (column 14, lines 18-54; garage information).

As per **Claim 6**, Nakagawa et al. further discloses wherein said shipping resource is a service (column 11, lines 28-34; column 14, lines 8-17; carriers' business activity data represents their shipping services).

As per **Claim 7**, Nakagawa et al. further discloses wherein said plurality of shipping resource data fields comprises a controlling entity (column 14, lines 8-17; column 14, lines 18-54; carrier data, for example).

As per **Claim 10**, Nakagawa et al. further discloses wherein said plurality of shipping resource data fields comprises a resource type field (column 14, lines 18-54; system distinguishes between various types of resources).

As per **Claim 11**, Nakagawa et al. and Applicant's prior art admission fail to disclose wherein said plurality of resource data fields comprises a serial number field. However, Examiner takes Official Notice that this element/limitation was well-known to one of ordinary skill in the art at the time of Applicant's invention (it was common to identify and track equipment via serial numbers in databases, with regard to various applications). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the invention of Nakagawa et al. as modified in the rejection for claim 1 such that said plurality of resource data fields comprises a serial number field, as was well-known to one of ordinary skill in the art at the time of Applicant's invention. Motivation is provided in that Examiner takes Official Notice that it was well-known to one of ordinary skill in the art at the time of Applicant's invention that a unique serial number allows for each individual piece of equipment in a system to be specifically identified relative to every other piece of equipment in the system (this follows from each serial number being unique).

As per **Claim 12**, Nakagawa et al. further discloses wherein said plurality of shipping resource data fields comprises a physical location field (column 10, lines 17-28; column 14, lines 18-54).

As per **Claim 13**, Nakagawa et al. further discloses wherein said plurality of shipping resource data fields comprises physical description field (Figure 8; column 14, lines 18-54; e.g., "vehicle type").

As per **Claim 14**, Nakagawa et al. further discloses wherein said plurality of shipping resource data fields comprises a time available field (column 7, lines 23-36; column 8, lines 5-31).

As per **Claim 15**, Nakagawa et al. further discloses wherein said plurality of shipping resource data fields comprises an acquisition fee field (column 5, lines 9-24; column 10, lines 14-16; column 13, lines 39-47; column 14, lines 8-17).

As per **Claim 16**, Nakagawa et al. further discloses wherein said plurality of shipping resource data fields comprises a field storing financial data (column 5, lines 9-24; column 10, lines 14-16; column 13, lines 39-47; column 14, lines 8-17). Nakagawa et al. fails to disclose wherein financial data is a per diem rate. Applicant's prior art admission further discloses wherein financial data is a per diem rate (Applicant's

specification, paragraph [0008]). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the invention of Nakagawa et al. as modified in the rejection for claim 1 such that financial data is a per diem rate, as disclosed by Applicant's prior art admission. Motivation is provided by Applicant's prior art admission in that per diem charges represent significant additional cost to a drayage operator or broker (Applicant's specification, paragraph [0008]).

As per **Claim 17**, Nakagawa et al. further discloses reserving means for reserving a shipping resource (column 5, lines 1-5; column 5, lines 9-25; column 7, lines 11-22; column 13, lines 29-35). Nakagawa et al. and Applicant's prior art admission fail to disclose confirming means for confirming the reservation. However, Examiner takes Official Notice that this limitation was well-known to one of ordinary skill in the art at the time of Applicant's invention (confirmation of online reservations was typical). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the invention of Nakagawa et al. as modified in the rejection for claim 1 such that it includes confirming means for confirming the reservation, as was well-known to one of ordinary skill in the art at the time of Applicant's invention. Motivation is provided in that Examiner takes Official Notice that it was well-known to one of ordinary skill in the art at the time of Applicant's invention that the purpose of confirming a reservation is to verify that the reservation was indeed completed.

As per **Claim 19**, Nakagawa et al. further discloses wherein said delivery means delivers exactly one shipping resource having resource data that best match said query data according to a predetermined matching algorithm (column 3, lines 48-63; column 4, lines 31-52; column 5, lines 9-25; column 14, lines 18-54).

As per **Claim 21**, Nakagawa et al. discloses:

- a method for administering a collaborative shipping community (column 3, lines 29-63; column 14, lines 8-17);

- said method being stored on a computer-readable medium encoded with a computer program (column 10, lines 17-28);

- obtaining data about shipping community participants regarding said participants' shipping resources (column 14, lines 18-54);

- causing said data to be stored (column 14, lines 18-54);

- gathering query data (column 3, lines 48-63; column 4, lines 31-52; column 5, lines 9-25; column 14, lines 18-54);

- comparing said query data against said shipping resource data (column 3, lines 48-63; column 4, lines 31-52; column 5, lines 9-25; column 14, lines 18-54);

- identifying said shipping resources having resource data that match said query data (column 3, lines 48-63; column 4, lines 31-52; column 5, lines 9-25; column 14, lines 18-54).

Nakagawa et al. fails to disclose wherein the type of shipping is drayage shipping. Applicant's prior art admission discloses wherein the type of shipping is

drayage shipping (Applicant's specification, paragraphs [0003]-[0004]). Therefore, the prior art included each element claimed although not necessarily in a single reference. One of ordinary skill in the art could have combined the elements as claimed by known methods (this is simply applying the transportation system of Nakagawa et al. specifically to drayage services). In combination, each element merely would have performed the same function as it did separately (Nakagawa et al.'s limitations would still be coordinating shipping services among multiple system participants to improve efficiency; Applicant's prior art admission's limitation would still be providing the land transport portions of intermodal transportation routes). One of ordinary skill in the art would have recognized that the results of the combination were predictable (the limitations do not interfere with the proper use of the other limitations in the combination; there are no surprise effects from the combination). Thus, the combination would have been obvious.

Nakagawa et al. and Applicant's prior art admission fail to disclose wherein data about shipping community participants is gathered directly from them. However, Examiner takes Official Notice that it was well-known to one of ordinary skill in the art at the time of Applicant's invention that one of the quickest ways to obtain information about an organization is typically to contact the organization directly (this is done frequently in the business world). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the invention of Nakagawa et al. as modified above in this rejection such that information about an organization is gathered directly from them, as was well-known to one of ordinary skill in the art at the time of

Applicant's invention. Motivation is provided in that Examiner takes Official Notice that it was well-known to one of ordinary skill in the art at the time of Applicant's invention that organizations are frequently willing to share information about themselves with the outside world for conducting business.

As per **Claim 22**, Nakagawa et al. further discloses reserving at least one of said shipping resources having resource data that match said query data (column 5, lines 1-5; column 5, lines 9-25; column 7, lines 11-22; column 13, lines 29-35).

As per **Claim 23**, Nakagawa et al. and Applicant's prior art admission fail to disclose confirming a reservation for a resource. However, Examiner takes Official Notice that this limitation was well-known to one of ordinary skill in the art at the time of Applicant's invention (confirmation of online reservations was typical). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the invention of Nakagawa et al. as modified in the rejection for claim 21 such that it confirms a reservation for a resource, as was well-known to one of ordinary skill in the art at the time of Applicant's invention. Motivation is provided in that Examiner takes Official Notice that it was well-known to one of ordinary skill in the art at the time of Applicant's invention that the purpose of confirming a reservation is to verify that the reservation was indeed completed.

As per **Claim 25**, Nakagawa et al. further discloses wherein said step of identifying said shipping resources having resource data that match said query data is accomplished according to a predetermined matching algorithm (column 3, lines 48-63; column 4, lines 31-52; column 5, lines 9-25; column 14, lines 18-54).

As per **Claims 26-30**, Nakagawa et al. fails to disclose wherein said drayage community participants include drayage operators, drayage brokers, owner-operators, intermodal marketing companies, and line-haul operators. Applicant's prior art admission further discloses wherein said drayage community participants include drayage operators, drayage brokers, owner-operators, intermodal marketing companies, and line-haul operators (Applicant's specification, paragraphs [0004] and [0008]). Therefore, the prior art included each element claimed although not necessarily in a single reference. One of ordinary skill in the art could have combined the elements as claimed by known methods (this is just a further adaptation of Nakagawa et al. to incorporate several specific types of drayage service providers into its system). In combination, each element merely would have performed the same function as it did separately (Nakagawa et al.'s limitations would still be coordinating shipping services among multiple system participants to improve efficiency; Applicant's prior art admission's limitations would still be providing the land transport portions of intermodal transportation routes and providing several types of drayage community services; the Officially Noticed limitation would still be providing a function of allowing needed data to be obtained). One of ordinary skill in the art would have recognized that

the results of the combination were predictable (the limitations do not interfere with the proper use of the other limitations in the combination; there are no surprise effects from the combination). Thus, the combination would have been obvious.

As per **Claim 32**, Nakagawa et al. fails to disclose wherein said drayage resources include power units. Applicant's prior art admission further discloses wherein said drayage resources include power units (Applicant's specification, paragraphs [0003]-[0004], paragraph [0006]). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the invention of Nakagawa et al. as modified in the rejection for claim 21 such that said drayage resources include power units, as disclosed by Applicant's prior art admission. Motivation is provided by Applicant's prior art admission in that power units are used to perform drayage services (Applicant's specification, paragraphs [0003]-[0004], paragraph [0006]).

As per **Claim 33**, Nakagawa et al. further discloses wherein said shipping resources include loads (column 14, lines 18-54).

As per **Claim 34**, Nakagawa et al. further discloses wherein said shipping resources include storage spaces (column 14, lines 18-54; garage information).

As per **Claim 35**, Nakagawa et al. further discloses wherein said shipping resources include services (column 11, lines 28-34; column 14, lines 8-17; carriers' business activity data represents their shipping services).

8. Claims 2, 8-9, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakagawa et al. in view of Applicant's prior art admission in further view of Carson, U.S. Patent No. 6,577,921 B1.

As per **Claim 2**, Nakagawa et al. and Applicants' prior art admission fail to disclose wherein said shipping resource being tracked is a container. Carson discloses wherein said shipping resource being tracked is a container (column 1, line 66, through column 2, line 24). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the invention of Nakagawa et al. as modified in the rejection for claim 1 such that said shipping resource being tracked is a container, as disclosed by Carson. Motivation is provided by Carson in that tracking shipping containers helps to avoid losing them (column 1, line 66, through column 2, line 24).

As per **Claims 8-9**, Nakagawa et al. fails to disclose wherein said controlling entity is an owner and wherein said controlling entity is a lessor. Applicant's prior art admission further discloses wherein said controlling entity is an owner and wherein said controlling entity is a lessor (Applicant's specification, paragraphs [0003]-[0004]). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the invention of Nakagawa et al. as modified in the rejection for

claim 2 such that said controlling entity is an owner and such that said controlling entity is a lessor, as disclosed by Applicant's prior art admission. Motivation is provided by Applicant's prior art admission in that drayage operators may own or lease their equipment.

As per **Claim 31**, Nakagawa et al. and Applicants' prior art admission fail to disclose wherein said shipping resource being tracked is a container. Carson discloses wherein said shipping resource being tracked is a container (column 1, line 66, through column 2, line 24). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the invention of Nakagawa et al. as modified in the rejection for claim 21 such that said shipping resource being tracked is a container, as disclosed by Carson. Motivation is provided by Carson in that tracking shipping containers helps to avoid losing them (column 1, line 66, through column 2, line 24).

9. Claims 18 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakagawa et al. in view of Applicant's prior art admission in further view of Taylor, John C., and Jackson, George C., "Conflict, Power, and Evolution in the Intermodal Transportation Industry's Channel of Distribution," Transportation Journal, Spring 2000, pp. 5-17.

As per **Claim 18**, Nakagawa et al. further discloses an agreement proposal means (column 5, lines 1-5; column 5, lines 9-25; column 7, lines 11-22; column 13, lines 29-35; means for setting up order, which is an agreement). Nakagawa et al. and

Applicant's prior art admission fail to disclose proposing an interchange agreement. Taylor et al. discloses proposing an interchange agreement (p. 13, column 2). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the invention of Nakagawa et al. as modified in the rejection for claim 17 such that it proposes an interchange agreement, as disclosed by Taylor et al. Motivation is provided by Taylor et al. in that interchange agreements allow for the more effective use of equipment (p. 13, column 2).

As per **Claim 24**, Nakagawa et al. further discloses an agreement proposal means (column 5, lines 1-5; column 5, lines 9-25; column 7, lines 11-22; column 13, lines 29-35; means for setting up order, which is an agreement). Nakagawa et al. and Applicant's prior art admission fail to disclose executing an interchange agreement. Taylor et al. discloses executing an interchange agreement (p. 13, column 2). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the invention of Nakagawa et al. as modified in the rejection for claim 21 such that it executes an interchange agreement, as disclosed by Taylor et al. Motivation is provided by Taylor et al. in that interchange agreements allow for the more effective use of equipment (p. 13, column 2).

Conclusion

10. **Examiner's Note:** Examiner has cited particular portions of the references as applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific

limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that the applicant, in preparing the responses, fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NATHAN ERB whose telephone number is (571) 272-7606. The examiner can normally be reached on M-F 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on (571) 272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NATHAN ERB
Examiner
Art Unit 3628

Nhe

/JOHN W HAYES/
Supervisory Patent Examiner, Art Unit 3628